



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, OLC, LRE

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent dated January 31, 2022 ("10 Day Notice"); for an Order for repairs to the unit or property, having contacted the Landlord in writing to make repairs, but they have not been completed; for an Order for the Landlord to Comply with the Act or tenancy agreement; and to suspend or restrict the Landlord's right to enter.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I asked the Tenant how she served the Landlord with her Application, Notice of Hearing, and documentary submissions, and she provided a proof of service statement from [J.G.]. [J.G.] said that he observed the Tenant serve the Landlord with these documents in person on January 13, 2022. The Landlord confirmed that he had received these documents from the Tenant. The Landlord said that he served the Tenant in person on March 23, 2022, with copies of the evidence he uploaded to the RTB. However, the Tenant denied having received anything from the Landlord on March 23, 2022. When I listed the items in the Landlord's documentary submissions to the RTB, the Tenant said she did not recall having received these from the Landlord after she served him with her Notice of Hearing documents. As a result, I will not consider the Landlord's documentary submissions in my considerations, but I will consider his testimony in the hearing.

Preliminary and Procedural Matters

The Tenant provided her email address in the Application and she confirmed this address in the hearing. The Landlord provided his email address in the hearing. They both confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Prior to hearing testimony from the Parties, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on her Application, the most urgent of which is the application to set aside a 10 Day Notice. I advised that not all the claims on the Application are sufficiently related to be determined during this proceeding, and that I would, therefore, only consider the Tenant's request to set aside the 10 Day Notice. The Tenant's other claims are dismissed, with leave to re-apply.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

The onus to prove their case is on the person making the claim. In most circumstances this is the person applying for dispute resolution. However, in some situations, the onus of proof is on the other party. For example, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. As such, the burden of proof is on the Landlord for the Tenant's main claim.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the fixed term tenancy began on June 1, 2016, and ran to

June 1, 2017, and then operated on a month-to-month basis. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$1,300.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$650.00, and no pet damage deposit.

The Landlord confirmed in the hearing that he served the Tenant with the 10 Day Notice, which was signed and dated January 3, 2022. They agreed that the 10 Day Notice has the rental unit address, it was served in person on January 3, 2022, and that it has an effective vacancy date of January 13, 2022. They agreed that it was served on the grounds that the Tenant failed to pay \$200.00 when it was due on January 1, 2022.

In the hearing, I asked the Landlord why he served the 10 Day Notice and he said it was because the Tenant did not pay the \$200.00 rent increase that the Landlord imposed starting on January 1, 2022. The Landlord said he imposed this increase, because the Tenant has allowed another person to move into the rental unit without the Landlord's permission, and contrary to the tenancy agreement.

The Landlord directed me to the tenancy agreement, which contains the following information:

8. Names of who will live in unit.

[C.G.]

[B.G.]

[C.G.]

The Landlord said that the Tenant's boyfriend has moved into the rental unit for the most part. The Landlord said:

He's been there for almost a year. When he stays, he stays two weeks, three weeks, and then leaves for two or three days. They didn't sent me proof that he isn't living there.

My expenses go up there . . . You can see from 2016 to now – everything jumps up there, my insurance, everything jumps up.

The Tenant said that she pays the utilities in the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The Landlord's rent increase raises two issues in my mind regarding its validity. First, the rent increase is inconsistent with section 42 of the Act, and Policy Guideline #37, "Rent Increases", in terms of when it was imposed.

2. Timing Requirement

Under section 35 of the MHPTA and section 42 of the RTA, a landlord can give a rent increase once every twelve months after:

- the date on which the tenant's rent was first payable for the rental unit, or
- if the tenant's rent has previously been increased, the effective date of the last rent increase

The tenancy started on June 1, 2016; therefore, a rent increase would be payable on June 1 - the date on which the Tenant's rent was first payable for the rental unit, and not January 1.

Further, Policy Guideline #13, "Rights and Responsibilities of Co-tenants", states the following about this situation:

H. OCCUPANTS

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. Where the tenancy agreement **lacks a clause** indicating that **no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit.** The tenant

on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant. .

[emphasis added]

In this case, the tenancy agreement names the tenants for this tenancy; however, it does not state that additional occupants are not allowed or that the Landlord will charge \$200.00 extra for such additional occupants. As a result of these considerations of the evidence and the authorities before me, I find that the rent increase was illegal and that the Tenant did not fail to pay rent when she refused to pay for this increase.

Accordingly, and pursuant to sections 46 and 62 of the Act, I cancel the 10 Day Notice and find that it is void and unenforceable, I hope it is clear that the rent increase is correspondingly void and unenforceable.

The Tenant's other claims are dismissed with leave to reapply.

Conclusion

The Tenant is successful in her Application to cancel the 10 Day Notice, as the Landlord imposed an illegal rent increase that the Tenant was not required to pay. The Landlord is urged to review the Act, Regulation and Policy Guidelines in administering his rental properties pursuant to the law.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 05, 2022

Residential Tenancy Branch